

## The State of South Carolina



## Office of the Attorney General

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March 17, 1987

The Honorable Jarvis R. Klapman  
Member, House of Representatives  
420-B Blatt Building  
Columbia, South Carolina 29211

Dear Representative Klapman:

By your letter dated February 27, 1987, you have asked if your county could use its "C" construction funds to correct a "drainage problem" and "safety hazard." You indicate that the "drain off system ...is creating a safety hazard along side the road where it becomes private property." You further indicate that this drainage problem "may or may not" be the result of the Highway Department or that the "developer...may have created the problem." Under the circumstances set out in your letter of February 27, 1987, the use of "C" funds has no statutory sanction.

"C" funds may only be expended on the State Highway Secondary System for "construction, improvements, and maintenance;" moreover, on county roads "C" funds may only be expended for "rocking or improving county roads and for street and traffic signs." 1/ S. C. Code Ann. § 12-27-400 (1986 Cum. Supp.) Thus, in order to use "C" funds to correct the "drain off system" that work must be for road construction, improvement or maintenance. 2/

1/ Obviously, the work to the "drain off system" cannot be termed for "street and traffic signs."

2/ It is not completely clear from your letter whether the road adjacent to the "private property" is a county road or part of the State Highway Secondary System; however, because of the conclusion reached herein it is not necessary to make the distinction.

The Honorable Jarvis R. Klapman  
March 17, 1987  
Page 2

You indicate that the Highway Department has advised you that the area of the "drain off system" is not maintained by the Highway Department. Thus, the Highway Department has indicated that work on the "drain off system" cannot be classified as the maintenance of roads. Obviously, repair to the "drain off system" would not be road construction. Similarly, that work does not appear to fit into the categorization of road improvement. Therefore, the utilization of "C" funds under the circumstances set out in your letter would not be proper. This conclusion is consistent with an earlier opinion of our Office which determined that "C" funds could not be utilized to patch potholes on county roads. Op. Atty. Gen. dated February 15, 1984. I will not duplicate the research or analysis of that opinion as I have enclosed a copy of that opinion for your review.

Also, assuming that repair of the "drain off system" were an appropriate use of "C" funds, your letter indicates that the problem exists where the road "becomes private property." Under those circumstances an issue as to whether public funds were to be used for a private purpose would arise. An analysis of that problem in the context of the usage of "C" funds is found in an opinion of this Office dated August 1, 1986, which I have also enclosed for your review.

In sum, it appears that the use of "C" funds under the circumstance set out in your letter of February 27, 1987, would not be proper.

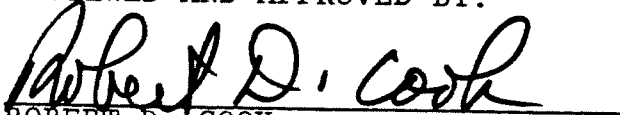
Sincerely yours,



Charles W. Gambrell, Jr.  
Assistant Attorney General

CWGjr:ss  
Enclosures

REVIEWED AND APPROVED BY:



ROBERT D. COOK  
EXECUTIVE ASSISTANT OPINIONS